

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11745RWZ

BARBARA DEIGHTON HAUPT, Trustee of
BD REALTY TRUST,

Plaintiff

v.

TOWN OF WAREHAM acting by and
through the BOARD OF SELECTMEN OF
THE TOWN OF WAREHAM, and the
BOARD OF SELECTMEN OF THE TOWN
OF WAREHAM,

Defendants

DEFENDANTS' PROPOSED
SUPPLEMENTAL JURY
INSTRUCTIONS

The defendants respectfully submit to the Court the attached supplemental proposed jury instructions, and requests that the jury be instructed accordingly.

DEFENDANTS

By their attorneys,

/s/ Jeffrey T. Blake

Richard Bowen (BBO# 552814)

Jeffrey T. Blake (BBO# 655773)

Kopelman and Paige, P.C.

Town Counsel

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DEFENDANTS' REQUESTED SUPPLEMENTAL JURY INSTRUCTION NO. 1

Pursuant to the applicable state regulations, 310 CRM 10:00 et seq., the plaintiff was not prevented from submitting another Notice of Intent depicting the actual wetland delineations at the subject property at any time.

DEFENDANTS' REQUESTED SUPPLEMENTAL JURY INSTRUCTION NO. 2

The doctrine of preclusion of inconsistent positions prevents a litigant from pressing a claim that is inconsistent with a position taken by that litigant either in a prior proceeding or in an earlier phase of the same proceeding. Patriot Cinemas, Inc. v. Gen. Cinema Corp., 834 F.2d 208, 212 (1st Cir. 1987); see also Intergen N.V. v. Grina, 344 F.3d 134, 144 (1st Cir. 2003) and cases cited. This doctrine is invoked in those situations where “a party has adopted one position, secured a favorable decision, and then taken a contradictory position in search of legal advantage.” See id.

Therefore, if you find that the wetland delineations presented by the plaintiff to the Massachusetts Department of Environmental Protection would preclude the construction of the proposed Beach Club use, you must find that plaintiff cannot now argue that the wetland delineation is incorrect.